IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 9 OF 2005
IN FIRST APPEAL NO. 76/2000.

Ulhas Savordekar,
represented through their legal heirs:

a) Smt. Jayashree U. Savordekar,
widow of Ulhas Savordekar.

b) Utpal U. Savordekar,
son of Ulhas Savordekar,
aged 21 years.

c) Vaibhav U. Savordekar,
son of late Ulhas Savordekar,
aged 16 years.

d) Priyanka U. Savordekar,
daughter of late Ulhas Savordekar,
aged 13 years. .... Applicants.

Versus

Tilak Raj Balla,
residing at Behind Magsons Super Centre,
La-Campala Housing Colony,
Miramar, Panaji, Goa. .... Respondent.

Shri M.S. Usgaonkar, Senior Advocate with Shri Sudin Usgaonkar, Advocate for the Applicants.

Shrim V. R. Tamba, Advocate for the Respondent.

CORAM: S. A. BOBDE, J.

DATE: 9th MARCH, 2007.

ORAL JUDGMENT:

The review petitioner (hereinafter referred to as the petitioner) seeks a review of the Judgment dated 21st April, 2005 of this Court in First Appeals No. 48/1999 and 76/2000.

2. The petitioner is sued by the respondent, inter alia, for compensation and for recovery of possession of premises handed over to him by the respondent. The respondent is himself a tenant of the premises. So this is not a suit by the owner. The trial Court negatived the plea of the petitioner that he was a tenant or lessee, but recorded a finding that he is a licensee. In Appeal, this Court held that the petitioner is not even a licensee but is running the business under a contract of management. According to the petitioner, an important feature of this case is his contention that the respondent had transferred the excise license to him on payment of monthly compensation of Rs.2500/- for running the liquor shop by which he was placed in possession. This transfer was contrary to the excise rules. Therefore, by virtue of Section 23 of the Indian Contract Act, the respondent was not entitled to any relief by way of compensation or for recovery of possession since he had entered into an illegal transaction. The respondent was also not entitled to the monetary relief and recovery of possession on the ground that he was himself a tenant. It is the contention of the petitioner that he had cited four decisions in support of the proposition that if a license is transferred contrary to the provisions of law, the transferor is not entitled to claim any monetary relief and recovery of possession by virtue of Section 23 of the Contract Act.

3. Mr. Usgaonkar, learned Counsel for the petitioners submits that this point namely that the excise license was illegally transferred by the respondent to the petitioner and therefore the respondent is not entitled to claim any monetary relief and recovery of possession was argued before this Court.

However, this Court negatived the contention without effectively dealing with the point and without considering the decisions relied by the petitioner and therefore the Judgment of this Court is vitiated by sufficient reason akin to mistake or error apparent on the face of the record for setting aside the judgment. The learned Counsel relied on a decision of the Supreme Court in ***Moran Mar Basselios Catholicos and another v. Most Rev. Mar Poulose Athanasius and others*** reported in ***A.I.R. 1954 S.C. 526 ,*** where their Lordships have expounded on the scope of review under Order 47, Rule 1 of Civil P.C., 1908. In paragraph 34, their Lordships have observed as follows :-

> " There appear to be no rules on the subject. In this situation, says the learned Attorney-General, if all the members of the Association attended the meeting the defect of want of proper notice does not matter. But did all members attend, even if the defendants' party who had adopted Ex. AM be left out. It does not appear that either of the two majority Judges of the High Court adverted to either of these aspects of the matter, namely, service of notice to all churches and competency of the persons who issued the notice of the Karingasserai meeting and in any case did not come to a definite finding on that question. The majority judgments, therefore, are defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. This, in our opinion, is certainly an error apparent on the face of the record. "

4. The learned Counsel for the petitioners further points out that in that case the Supreme Court found that the Judgment of the majority of Judges of the High Court suffered from an error apparent on the face of the record because the said majority "did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit".

5. In short the contention on behalf of the petitioner in this case is that this Court failed to effectively deal with the petitioner's contention that the respondent had transferred the excise license to the petitioner and was not entitled to any monetary relief and recovery of possession and further that the Court wrongly came to the conclusion that the respondent had inducted the petitioner into the premises under some sort of management contract. According to to the learned counsel for the petitioners, if the Court had considered that it was the petitioner who was paying a certain sum of money to the respondent for doing business under the excise license, the Court would have come to a conclusion that the arrangement between them could not be treated as a management contract that the arrangement amounted to a transfer and therefore the respondent was not entitled to any relief having transferred the license contrary to the Excise Rules and in view of Section 23 of the Contract Act.

6. It is therefore necessary to examine this contention on behalf of the petitioners. From a plain reading of the Judgment of this Court, it is clear, vide para 11, that this Court considered the entire transaction between the parties and came to the conclusion that there was no transfer of the liquor license by the respondent to the petitioner and therefore there was no violation of the Excise Act and the Rules thereunder. On the basis of this finding, the Court negatived the petitioner's contention that the respondent had acted in breach of the excise law and was not entitled to any monetary relief and

recovery of possession in terms of Section 23 of the Contract Act. Therefore this is not a case where this Court failed to effectively deal with and determine the important issue raised by the petitioner. The Court has squarely decided the issue, may be erroneously in the opinion of the petitioner. In the circumstances, the finding of the Court cannot be said to be vitiated by an error apparent on the face fo the record.

7. At this juncture, it may be useful to distinguish the case relied upon by the learned counsel for the petitioners, that is the case of M.M.B. Catholicos. In that case the Supreme Court observed that the error apparent on the face of the record lay in the High Court not having adverted to a crucial matter namely whether the persons who issued the notice of the meeting in question
8. -- were competent to do so and whether service of notice of the meeting to all the Churches had been effected. Since the answer to this question was determinative of the title of the plaintiffs and the maintainability of the suit, I am of view that there is no such error on the face of the record in the judgment of this Court. The petitioner's argument that the respondent is not entitled to any relief because he illegally transferred the excise license, has been squarely dealt with by this Court which has come to the conclusion that there is in fact no transfer. This Court has not failed to effectively deal with and determine the petitioner's submission. Having come to the conclusion that there was no license, it was not necessary for the Court to deal with the cases cited on behalf of the petitioners in which the Courts have held that where there is an illegal transfer of the license, a transferor is not entitled to any monetary relief by virtue of Section 23 of the Contract Act.

In this view of the matter, I see no merit in this review petition which is hereby dismissed.

S. A. BOBDE, J.

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